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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. 7

WILLIAM SCHNEIDERMAN, *Petitioner,*

vs.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

REPLY BRIEF FOR PETITIONER.

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OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, FRANK EFROIM SPECTOR, WILLIAM SCHNEIDERMAN, AL RICHMOND, ALBERT JASON LIMA, CARL RUDE LAMBERT, ROSE CHERNIN KUSNITZ, ERNEST OTTO FOX, BEN DOBBS, DOROTHY HEALEY CONNELLY, PHILIP MARSHALL CONNELLY and FRANK CARLSON,

Petitioners,

vs.

UNITED STATES OF AMERICA.

PETITION OF AL RICHMOND AND PHILIP MARSHALL CONNELLY FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

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WILLIAM SCHNEIDERMAN,
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REPLY BRIEF FOR PETITIONER.

Petitioner, William Schneiderman, respectfully presents this abbreviated reply to the government brief on file herein. No extensive reply is undertaken, for the reason that in his petition for certiorari and opening brief herein, petitioner has dealt with every subject with which the government brief is concerned as it affects him.

I.

HISTORY AND THE RECORD BELOW SHOW THAT THE UNIONS INVOLVED AND AMERICAN FEDERATION OF LABOR OFFICIALS, NOT THE COMMUNIST PARTY, CONDUCTED AND LED THE SAN FRANCISCO GENERAL STRIKE OF 1934.

The government accepts at face value the fanciful testimony of its witness, Honig, that, on orders from Moscow, petitioner concurring, the Communist Party "brought about" the general strike in San Francisco in 1934. Demonstrating a remarkable eclectic taste, the government also accepts without qualification the somewhat boastful claims to credit for the strike written by Sam Darcy, Party leader, in a 1934 issue of *The Communist*.

Honig's account dealt with a time 17 years prior to the occasion of his testimony. Under compelling circumstances nine years earlier, and closer, to the event, Honig had said nothing about the alleged orders from Moscow, or about any "rehearsal for seizure of power".

The government's concentration on this extraordinary testimony of Honig effectively demonstrates the paucity of its case against petitioner.

In his opening brief (pp. 8, 9, 29-32) petitioner showed not only this curious, cyclic quality of Honig's memory, but as well that his account below has little to do with the facts of history, or with contemporary estimates of the strike by the Communist Party itself. In actual fact, a San Francisco Labor Council Committee of American Federation of Labor officials,

composed of Vandeleur, Kidwell, O'Connell, and others, all non-Communists, led the general strike.

It had been thought that, as long ago as 1939, the absurd notion that in 1934 the entire San Francisco labor movement bowed to the will of the Communists had been laid to rest. Dean James M. Landis, as Special Hearing Officer for the Department of Labor, in 1939 presided over an extended and exhaustive examination into the origins and conduct of that strike, as he heard the government's first of its repeated but ultimately futile efforts to prove waterfront labor leader Harry Bridges a Communist. His sober conclusion on this issue was:

> "The evidence with reference to Bridges' associations with the Communist Party during the 1934 strike deserves retelling. Apart from Dietrich's subsequent rationalization that the Albion Hall Group was dominated by Communists, this record cannot be said to establish that the policies pursued by the Longshoremen, the joint strike committee, or the San Francisco Labor Council during the 1934 strike, were Communist policies as such." (In the Matter of Harry R. Bridges, Findings and Conclusions of the Trial Examiner, dated December 28, 1939, United States Department of Labor, p. 123).

II.

THE GOVERNMENT WAS ESTOPPED TO RELITIGATE THE FUNDAMENTAL ISSUE BELOW BY THE DECISION ADVERSE TO IT IN SCHNEIDERMAN v. UNITED STATES.

The government meets petitioner's plea of res judicata and collateral estoppel, based on this Court's decision in *Schneiderman v. United States,* 320 U.S. 118, with a labored effort to distinguish the issue there from the one below. The government says that this Court decided only petitioner's attachment to the Constitution and the good order of the United States in 1927, and claims that petitioner's argument ignores the "proliferation of Communist literature since 1927" published between 1927 and the time of the trial below.

The government's argument ignores entirely that, as this Court said, "petitioner's beliefs" on the "crucial issue of advocacy of force and violence" were exactly what were before this Court for determination in the earlier proceeding. His state of mind is not different in quality from his intent, and his intent both with respect to advocacy and to bringing about overthrow by force and violence was equally a "crucial issue" below in this case.

The fact that examination was had in *Schneiderman* of petitioner's beliefs (or intent, or state of mind) in 1927, and instead in 1948-1951 here, loses all significance when it is seen that the basis of the government's purported proof in both instances is identical: the books comprising the doctrines of Marxism-Leninism, to which petitioner admittedly adheres.

The government's references to "an entire body" and "proliferation" of Communist literature since 1927 glosses easily over the fundamental fact that it is not this literature, but only the older and identical books, on which the government has depended in every Smith Act case beginning with *Dennis*, and now depends to establish petitioner's supposed adherence to force and violence.

In his opening brief (p. 46 et seq) petitioner demonstrated the identity of the Marxist-Leninist books used in *Schneiderman* and used again below. Nowhere in its brief does the government meet petitioner's contention that it was estopped to relitigate against petitioner the issue of his beliefs on the subject of force and violence based on his subscription to Marxism-Leninism as this is expounded in exactly the same volumes of literature sought to be used again in this case.

III.

THE COURT'S CONCLUSION IN SCHNEIDERMAN v. UNITED STATES WAS NOT "NAIVE", NOR "OF YESTERDAY", BUT IS LIVING LAW TODAY.

Ill grace becomes the government's attempt to escape the principles of collateral estoppel and res judicata by its characterization of the Court's opinion, in *Schneiderman v. U.S.*, 320 U.S. 118, as "naive", or at least "of yesterday". For the Court in *Schneiderman* had the government's admission, made with "commendable candor", (320 U.S., at 148) of the basic proposition on which the decision turned.

The same issue is not less important to the case at bar: the obvious existence of sharply conflicting evidence concerning the alleged Communist Party principle of advocacy of force and violence. Since the record below displays the same sharp conflict on the same issue, both fundamental constitutional safeguards of freedom of thought, and basic common sense, would reasonably compel the same frank admission by the government today.

But the judgments here depend entirely upon the thesis that a federal prosecutor's interpretation of Marxism-Leninism as advocacy of force and violence is the only possible meaning of that complex body of doctrine. Hence, the government in its brief has abandoned constitutional principles, common sense, and good taste, to criticize the Court for pursuing to its logical conclusion what the government admitted was true in *Schneiderman*.

Nor was the Court's opinion there, as the government now would imply, quickly out of date and forgotten. The truth is to the contrary. Few decisions have been as frequently cited in the federal courts over the years as the decision in *Schneiderman*.

Reference to Shepard's United States Citations (1943 Supplement to Case Edition, and Supplements through August, 1956) reflect the fact that courts of the United States have cited the decision at least 165 times since it was rendered. The same authority indicates that in only a comparatively few instances was any attempt made to distinguish it as guiding authority.

Notwithstanding the government's disdainful allusions, therefore, the fact is the Court's *Schneiderman* decision has always been, and continues to be, recognized as a landmark of constitutional liberties, and is the soundest basis for petitioner's plea of res judicata and collateral estoppel.

Dated, October 3, 1956.

Respectfully submitted,
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